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GUIDE  
TO  
THE ARTICLES OF WAR

*Prepared for  
The Reserve Officers' Training Corps  
of Harvard University*

BY

EUGENE WAMBAUGH, LL.D.

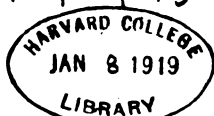
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INTERLEAVED NOTE-BOOK EDITION

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## PREFACE

IN the Army, knowledge of the Articles of War is not a luxury but a necessity. The beginner in military matters will do well to carry the Articles of War in his pocket.

Hence this little book.

Part I gives those portions of the Constitution of the United States which expressly or argumentatively serve as a foundation for the Articles of War.

Part II gives the Articles of War themselves, and adds references to some of the relevant passages in the *Manual for Courts-Martial*, edition of 1917 — the official publication which is in effect a commentary upon the Articles of War.

Part III gives practical problems.

To read the Articles of War again and again, to apply them to the problems herein given and to others, to write queries and comments, and to study the *Manual for Courts-Martial* — this is the way to know the Articles of War as they should be known. Even the beginner may soon be able to call many of them by their numbers; and doubtless among these will be A. W. 54, 58, 61, 62, 63, 64, 65, 69, 75, 83, 84, 85, 86, 93, 94, 95, and 96.

Finally, it should be borne in mind that the present Articles of War were approved on August 29, 1916, and, with a few exceptions, did not go into effect until March 1, 1917, and that consequently all documents or treatises earlier than 1917 must be used with caution.

E. W.

CAMBRIDGE, MASS., May 30, 1917.

Military Law: In M. C. M. par 2. "The Legal system that regulates the government of the military establishment." In other words: "the body of rules governing members of the army." or "the rules defining & punishable offenses."  
(2) method of determining guilt and  
(3) the punishment

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In army there must be

1. Technical skill
2. Health
3. Discipline (Mil. Law.
  - a. Necessary
  - b. Always existent
  - c. Constitution provides it





# GUIDE TO THE ARTICLES OF WAR

## PART I

### EXTRACTS FROM THE CONSTITUTION OF THE UNITED STATES<sup>1</sup>

WE THE PEOPLE of the United States, in Order to form a more perfect Union, establish Justice, insure domestic Tranquility, provide for the common defence, promote the general Welfare, and secure the Blessings of Liberty to ourselves and our Posterity, do ordain and establish this CONSTITUTION for the United States of America.

ARTICLE I, SECTION 8. The Congress shall have Power . . .

[11] To declare War, . . . and make Rules concerning Captures on Land and Water;

[12] To raise and support Armies, but no Appropriation of Money to that Use shall be for a longer Term than two Years;

[13] To provide and maintain a Navy;

[14] To make Rules for the Government and Regulation of the land and naval Forces;

[15] To provide for calling forth the Militia to execute the Laws of the Union, suppress Insurrections and repel Invasions;

[16] To provide for organizing, arming, and disciplining, the Militia, and for governing such Part of them as may be em-

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<sup>1</sup> An attempt is here made to present all parts of the Constitution which serve as a basis for the Articles of War.

"The court of the U.S. both argument-  
atively and expressly recognizes  
each feature of mil. law.

played in the Service of the United States, reserving to the States respectively, the Appointment of the Officers, and the Authority of training the Militia according to the discipline prescribed by Congress; . . .

[18] To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof.

ART. II, SEC. 2. [1] The President shall be Commander in Chief of the Army and Navy of the United States, and of the Militia of the several States, when called into the actual Service of the United States; . . . and he shall have Power to grant Reprieves and Pardons for Offences against the United States, except in Cases of Impeachment.

ART. IV, SEC. 4. The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence.

AMENDMENT V. No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.



## PART II

### THE ARTICLES OF WAR — WITH REFERENCES<sup>1</sup>

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled . . .*

SEC. 3. That section thirteen hundred and forty-two of the Revised Statutes of the United States be, and the same is hereby, amended to read as follows:

"SEC. 1342. The articles included in this section shall be known as the Articles of War and shall at all times and in all places govern the armies of the United States. [*M.C.M.*, pages IX-X.]

#### "I. PRELIMINARY PROVISIONS

"ARTICLE 1. DEFINITIONS. — The following words when used in these articles shall be construed in the sense indicated in this Article, unless the context shows that a different sense is intended, namely:

"(a) The word 'officer' shall be construed to refer to a commissioned officer;

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<sup>1</sup> The citations here appended to each of the Articles of War refer to "A Manual for Courts-Martial," revised in the Judge Advocate General's Office in 1916 and published by the Government Printing Office, the impression used being the one "corrected to Apr. 15, 1917."

The text of the Articles of War is taken from "An Act Making appropriations for the Support of the Army for the fiscal year ending June thirtieth, nineteen hundred and seventeen, and for other purposes," approved Aug. 29, 1916, and printed in 39 United States Statutes at Large, Part I, chap. 418, pages 619, 650-670. The Articles of War are also found in *M.C.M.*, pages 308-329.

Mil. Law is found in

- (1) Acts of Congress
- (2) Executive Orders.
- (3) Customs of the Service

"(b) The word 'soldier' shall be construed as including a non-commissioned officer, a private, or any other enlisted man;

"(c) The word 'company' shall be understood as including a troop or battery; and

"(d) The word 'battalion' shall be understood as including a squadron. [*M.C.M., pars. 4, 8.*]

**ART. 2. PERSONS SUBJECT TO MILITARY LAW.** — The following persons are subject to these articles and shall be understood as included in the term 'any person subject to military law,' or 'persons subject to military law,' whenever used in these articles: *Provided*, That nothing contained in this Act, except as specifically provided in Article two, subparagraph (c), shall be construed to apply to any person under the United States naval jurisdiction, unless otherwise specifically provided by law.

"(a) All officers and soldiers belonging to the Regular Army of the United States; all volunteers, from the dates of their muster or acceptance into the military service of the United States; and all other persons lawfully called, drafted or ordered into, or to duty or for training in, the said service, from the dates they are required by the terms of the call, draft or order to obey the same;

"(b) Cadets;

"(c) Officers and soldiers of the Marine Corps when detached for service with the armies of the United States by order of the President: *Provided*, That an officer or soldier of the Marine Corps when so detached may be tried by military court-martial for an offense committed against the laws for the government of the naval service prior to his detachment, and for an offense committed against these articles he may be tried by a naval court-martial after such detachment ceases;

"(d) All retainers to the camp and all persons accompanying or serving with the armies of the United States without the ter-



1. The expression persons accompanying or  
serving with army is perhaps explained  
by Hagm Cons. 1907 Article 4.

ritorial jurisdiction of the United States, and in time of war all such retainers and persons accompanying or serving with the armies of the United States in the field, both within and without the territorial jurisdiction of the United States, though not otherwise subject to these articles;

"(e) All persons under sentence adjudged by courts-martial;

"(f) All persons admitted into the Regular Army Soldiers' Home at Washington, District of Columbia. [*M.C.M.*, *pars.* 4, 9-10, 13, 38, 74 (j).]

## "II. COURTS-MARTIAL

"ART. 3. COURTS-MARTIAL CLASSIFIED. — Courts-martial shall be of three kinds, namely:

"First, general courts-martial;

"Second, special courts-martial; and

"Third, summary courts-martial. [*M.C.M.*, *pars.* 3, 5.]

### "A. COMPOSITION

"ART. 4. WHO MAY SERVE ON COURTS-MARTIAL. — All officers in the military service of the United States, and officers of the Marine Corps when detached for service with the Army by order of the President, shall be competent to serve on courts-martial for the trial of any persons who may lawfully be brought before such courts for trial. [*M.C.M.*, *pars.* 6, 9-12.]

"ART. 5. GENERAL COURTS-MARTIAL. — General courts-martial may consist of any number of officers from five to thirteen, inclusive; but they shall not consist of less than thirteen, when that number can be convened without manifest injury to the service. [*M.C.M.*, *par.* 7.]

"ART. 6. SPECIAL COURTS-MARTIAL. — Special courts-martial may consist of any number of officers from three to five, inclusive. [*M.C.M.*, *par.* 7.]

who follow an army without directly be-  
longing to it, such as newspaper correspond-  
ents, reporters, authors, contractors, etc.

(2) under mil. sentence: under mil. law.

A.W. 3. Specifies the tribunals most import-  
ant in M.L. but there are others 104, 105-  
121, 92-103. - These kinds of C. M. differ  
in the number of their members; the  
authority appointing them; in their juris-  
diction over persons, in their juris-  
diction over offenses, in extent and  
punishment that can be adjudged.

3 kinds of C.M. are alike in being composed  
of officers only; - in passing upon both  
the law and the fact. - in being <sup>the</sup> original  
finders only, in being criminal etc only and in  
being able to promulgate any finding  
or sentence that does not require

"ART. 7. SUMMARY COURTS-MARTIAL. — A summary court-martial shall consist of one officer. [*M.C.M.*, *pars.* 7, 9, 26, 27.]

"B. BY WHOM APPOINTED

"ART. 8. GENERAL COURTS-MARTIAL. — The President of the United States, the commanding officer of a territorial division or department, the Superintendent of the Military Academy, the commanding officer of an army, an army corps, a division, or a separate brigade, and, when empowered by the President, the commanding officer of any district or of any force or body of troops may appoint general courts-martial; but when any such commander is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior competent authority, and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution. [*M.C.M.*, *pars.* 6, 14-19, 62-64, 129-131, 194.]

"ART. 9. SPECIAL COURTS-MARTIAL. — The commanding officer of a district, garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a brigade, regiment, detached battalion, or other detached command may appoint special courts-martial; but when any such commanding officer is the accuser or the prosecutor of the person or persons to be tried, the court shall be appointed by superior authority, and may in any case be appointed by superior authority when by the latter deemed desirable; and no officer shall be eligible to sit as a member of such court when he is the accuser or a witness for the prosecution. [*M.C.M.*, *pars.* 6, 17, 21-24, 62-64, 129-131, 194.]

"ART. 10. SUMMARY COURTS-MARTIAL. — The commanding officer of a garrison, fort, camp, or other place where troops are on duty, and the commanding officer of a regiment, detached battalion, detached company, or other detachment may ap-

(or authority) and that is not subject  
to modification, mitigation or  
suspension by this authority.

point summary courts-martial; but such summary courts-martial may in any case be appointed by superior authority when by the latter deemed desirable: Provided, That when but one officer is present with a command he shall be the summary court-martial of that command and shall hear and determine cases brought before him. [*M.C.M.*, pars. 6, 9, 25-29.]

"ART. 11. APPOINTMENT OF JUDGE ADVOCATES. — For each general or special court-martial the authority appointing the court shall appoint a judge advocate, and for each general court-martial one or more assistant judge advocates when necessary. [*M.C.M.*, pars. 30-31, 94, 106.]

#### "C. JURISDICTION

"ART. 12. GENERAL COURTS-MARTIAL. — General courts-martial shall have power to try any person subject to military law for any crime or offense made punishable by these articles and any other person who by the law of war is subject to trial by military tribunals: Provided, That no officer shall be brought to trial before a general court-martial appointed by the Superintendent of the Military Academy. [*M.C.M.*, pars. 3, 13, 14, 16, 38-40, 78, 173, 320.]

"ART. 13. SPECIAL COURTS-MARTIAL. — Special courts-martial shall have power to try any person subject to military law, except an officer, for any crime or offense not capital made punishable by these articles: Provided, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of special courts-martial any class or classes of persons subject to military law.

"Special courts-martial shall not have power to adjudge dishonorable discharge, nor confinement in excess of six months, nor to adjudge forfeiture of more than six months' pay. [*M.C.M.*, pars. 41-42, 78, 173, 320.]

The Pres. may appoint any member C. M.

Notice that no trial judge advocate is appointed for summary C. M.

A.W. 12 shows that essential features of genl C. M. = (1) has jurisd. over all persons only; A.M.L. as regards all offenses punishable by mil. law.

A.W. 13 shows that essential features of special C. M. are: has jurisdiction over only soldiers (excluding those with certificate of eligibility for promotion) and over only non-capital offenses. Notice also that spcl. C. M. cannot adjudge dishonorable discharge.

"ART. 14. SUMMARY COURTS-MARTIAL. — Summary courts-martial shall have power to try any person subject to military law, except an officer, a cadet, or a soldier holding the privileges of a certificate of eligibility to promotion, for any crime or offense not capital made punishable by these articles: *Provided*, That non-commissioned officers shall not, if they object thereto, be brought to trial before a summary court-martial without the authority of the officer competent to bring them to trial before a general court-martial. *Provided further*, That the President may, by regulations, which he may modify from time to time, except from the jurisdiction of summary courts-martial any class or classes of persons subject to military law.

"Summary courts-martial shall not have power to adjudge confinement in excess of three months, nor to adjudge the forfeiture of more than three months' pay: *Provided*, That when the summary court officer is also the commanding officer no sentence of such summary court-martial adjudging confinement at hard labor or forfeiture of pay, or both, for a period in excess of one month shall be carried into execution until the same shall have been approved by superior authority. [*M.C.M., pars. 43-44, 78, 173, 320, 483, and page 409.*]

"ART. 15. NOT EXCLUSIVE. — The provisions of these articles conferring jurisdiction upon courts-martial shall not be construed as depriving military commissions, provost courts, or other military tribunals of concurrent jurisdiction in respect of offenders or offenses that by the law of war may be lawfully triable by such military commissions, provost courts, or other military tribunals. [*M.C.M., pars. 2-3, 45.*]

"ART. 16. OFFICERS: HOW TRIABLE. — Officers shall be triable only by general courts-martial, and in no case shall an officer, when it can be avoided, be tried by officers inferior to him in rank. [*M.C.M., pars. 8, 12.*]



A.W. 14 shows no. fraction of sum. C.M. an  
has juris. over only priv. soldiers (not  
holding cert. of elig. for prom) and over  
non-coms not objecting to court and  
that it has jurisdiction over same  
offences as special C.M. notes that  
S.M. cannot adjudge dishon. disch.  
or any punishment which exceeds 3 mo.  
and that if the Ct. is composed of a  
commanding officer is sentenced  
exceeding 1 mo. cannot be carried  
into execution until approved by  
superior authority.

**"D. PROCEDURE**

**"ART. 17. JUDGE ADVOCATE TO PROSECUTE.**—The judge advocate of a general or special court-martial shall prosecute in the name of the United States, and shall, under the direction of the court, prepare the record of its proceedings. The accused shall have the right to be represented before the court by counsel of his own selection for his defense, if such counsel be reasonably available, but should he, for any reason, be unrepresented by counsel, the judge advocate shall from time to time throughout the proceedings advise the accused of his legal rights. [*M.C.M.*, *pars.* 95–111, 123, 133, and *pages* 353–356.]

**"ART. 18. CHALLENGES.**—Members of a general or special court-martial may be challenged by the accused, but only for cause stated to the court. The court shall determine the relevancy and validity thereof, and shall not receive a challenge to more than one member at a time. [*M.C.M.*, *pars.* 120–131, 137.]

**"ART. 19. OATHS.**—The judge advocate of a general or special court-martial shall administer to the members of the court, before they proceed upon any trial, the following oath or affirmation: 'You, A. B., do swear (or affirm) that you will well and truly try and determine, according to the evidence, the matter now before you, between the United States of America and the person to be tried, and that you will duly administer justice, without partiality, favor, or affection, according to the provisions of the rules and articles for the government of the armies of the United States, and if any doubt should arise, not explained by said articles, then according to your conscience, the best of your understanding, and the custom of war in like cases; and you do further swear (or affirm) that you will not divulge the findings or sentence of the court until they shall be published by the proper authority, except to the judge advocate and assistant judge advocate; neither will you disclose or

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Summary

Trial judge: ~~adviser~~ is counsel for govt  
and for the accused when not repre-  
sented and ~~for the~~ adviser for the  
ct. itself when requested and the  
juror charged with seeing that  
the proceedings are correct and  
properly recorded.

discover the vote or opinion of any particular member of the court-martial, unless required to give evidence thereof as a witness by a court of justice in due course of law. So help you God.'

"When the oath or affirmation has been administered to the members of a general or special court-martial, the president of the court shall administer to the judge advocate and to each assistant judge advocate, if any, an oath or affirmation in the following form: 'You, A. B., do swear (or affirm) that you will not divulge the findings or sentence of the court to any but the proper authority until they shall be duly disclosed by the same. So help you God.'

"All persons who give evidence before a court-martial shall be examined on oath or affirmation in the following form: 'You swear (or affirm) that the evidence you shall give in the case now in hearing shall be the truth, the whole truth, and nothing but the truth. So help you God.'

"Every reporter of the proceedings of a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: 'You swear (or affirm) that you will faithfully perform the duties of reporter to this court. So help you God.'

"Every interpreter in the trial of any case before a court-martial shall, before entering upon his duties, make oath or affirmation in the following form: 'You swear (or affirm) that you will truly interpret in the case now in hearing. So help you God.'

"In case of affirmation the closing sentence of adjuration will be omitted. [*M.C.M.*, *pars.* 91, 132-136.]

"ART. 20. CONTINUANCES. — A court-martial may, for reasonable cause, grant a continuance to either party for such time and as often as may appear to be just. [*M.C.M.*, *pars.* 139-141.]

"ART. 21. REFUSAL TO PLEAD. — When the accused, ar-



raigned before a court-martial, from obstinacy and deliberate design stands mute or answers foreign to the purpose, the court may proceed to trial and judgment as if he had pleaded not guilty. [*M.C.M.*, *pars.* 144-145, 155.]

"ART. 22. PROCESS TO OBTAIN WITNESSES. — Every judge advocate of a general or special court-martial and every summary court-martial shall have power to issue the like process to compel witnesses to appear and testify which courts of the United States, having criminal jurisdiction, may lawfully issue; but such process shall run to any part of the United States, its Territories, and possessions. [*M.C.M.*, *pars.* 159-169, 172, and pages 383-390.]

"ART. 23. REFUSAL TO APPEAR OR TESTIFY. — Every person not subject to military law who, being duly subpoenaed to appear as a witness before any military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before such court, commission, court of inquiry, or board, willfully neglects or refuses to appear, or refuses to qualify as a witness, or to testify, or produce documentary evidence which such person may have been legally subpoenaed to produce, shall be deemed guilty of a misdemeanor, for which such person shall be punished on information in the district court of the United States or in a court of original criminal jurisdiction in any of the Territorial possessions of the United States, jurisdiction being hereby conferred upon such courts for such purpose; and it shall be the duty of the United States district attorney or the officer prosecuting for the Government in any such court of original criminal jurisdiction, on the certification of the facts to him by the military court, commission, court of inquiry, or board, to file an information against and prosecute the person so offending, and the punishment of such person, on conviction, shall be a fine of not more than \$500 or imprison-



ment not to exceed six months, or both, at the discretion of the court: *Provided*, That the fees of such witness and his mileage, at the rates allowed to witnesses attending the courts of the United States, shall be duly paid or tendered said witness, such amounts to be paid out of the appropriation for the compensation of witnesses. [*M.C.M.*, *pars.* 168, 170-172, 183-188, 192, 232, 235, and pages 381-388.]

**"ART. 24. COMPULSORY SELF-INCRIMINATION PROHIBITED.** — No witness before a military court, commission, court of inquiry, or board, or before any officer, military or civil, designated to take a deposition to be read in evidence before a military court, commission, court of inquiry, or board, shall be compelled to incriminate himself or to answer any questions which may tend to incriminate or degrade him. [*M.C.M.*, *pars.* 214-215, 233-236.]

**"ART. 25. DEPOSITIONS — WHEN ADMISSIBLE.** — A duly authenticated deposition taken upon reasonable notice to the opposite party may be read in evidence before any military court or commission in any case not capital, or in any proceeding before a court of inquiry or a military board, if such deposition be taken when the witness resides, is found, or is about to go beyond the State, Territory, or district in which the court, commission, or board is ordered to sit, or beyond the distance of one hundred miles from the place of trial or hearing, or when it appears to the satisfaction of the court, commission, board, or appointing authority that the witness, by reason of age, sickness, bodily infirmity, imprisonment, or other reasonable cause, is unable to appear and testify in person at the place of trial or hearing: *Provided*, That testimony by deposition may be adduced for the defense in capital cases. [*M.C.M.*, *pars.* 165, 167, 174, 263-269, 275, and pages 379-382.]

**"ART. 26. DEPOSITIONS — BEFORE WHOM TAKEN.** — Depositions to be read in evidence before military courts, commissions,





courts of inquiry, or military boards, or for other use in military administration, may be taken before and authenticated by any officer, military or civil, authorized by the laws of the United States or by the laws of the place where the deposition is taken to administer oaths. [*M.C.M.*, *pars.* 175-182.]

"ART. 27. COURTS OF INQUIRY — RECORDS OF, WHEN ADMISSIBLE. — The record of the proceedings of a court of inquiry may be read in evidence before any court-martial or military commission in any case not capital nor extending to the dismissal of an officer, and may also be read in evidence in any proceeding before a court of inquiry or a military board: *Provided*, That such evidence may be adduced by the defense in capital cases or cases extending to the dismissal of an officer. [*M.C.M.*, *pars.* 174, 272, 475.]

"ART. 28. RESIGNATION WITHOUT ACCEPTANCE DOES NOT RELEASE OFFICER. — Any officer who, having tendered his resignation and prior to due notice of the acceptance of the same, quits his post or proper duties without leave and with intent to absent himself permanently therefrom shall be deemed a deserter. [*M.C.M.*, *pars.* 281, 284.]

"ART. 29. ENLISTMENT WITHOUT DISCHARGE. — Any soldier who, without having first received a regular discharge, again enlists in the Army, or in the militia when in the service of the United States, or in the Navy or Marine Corps of the United States, or in any foreign army, shall be deemed to have deserted the service of the United States; and, where the enlistment is in one of the forces of the United States mentioned above, to have fraudulently enlisted therein. [*M.C.M.*, *pars.* 74 (n), 284, 409.]

"ART. 30. CLOSED SESSIONS. — Whenever a general or special court-martial shall sit in closed session, the judge advocate *and the assistant judge advocate*, if any, shall withdraw; and *when their legal advice or their assistance in referring to the*



recorded evidence is required, it shall be obtained in open court, and in the presence of the accused and of his counsel if there be any. [*M.C.M., pars. 91-92, 101.*]

"ART. 31. ORDER OF VOTING. — Members of a general or special court-martial, in giving their votes, shall begin with the junior in rank. [*M.C.M., pars. 90, 294, 308.*]

"ART. 32. CONTEMPTS. — A court-martial may punish at discretion, subject to the limitations contained in Article fourteen, any person who uses any menacing words, signs, or gestures in its presence, or who disturbs its proceedings by any riot or disorder. [*M.C.M., par. 173.*]

"ART. 33. RECORDS — GENERAL COURTS-MARTIAL. — Each general court-martial shall keep a separate record of its proceedings in the trial of each case brought before it, and such record shall be authenticated by the signature of the president and the judge advocate; but in case the record can not be authenticated by the judge advocate, by reason of his death, disability, or absence, it shall be signed by the president and an assistant judge advocate, if any; and if there be no assistant judge advocate, or in case of his death, disability, or absence, then by the president and one other member of the court. [*M.C.M., pars. 95, 107, 154 (d), 354-357, 400, and pages 357-364 and 375.*]

"ART. 34. RECORDS — SPECIAL AND SUMMARY COURTS-MARTIAL. — Each special court-martial and each summary court-martial shall keep a record of its proceedings, separate for each case, which record shall contain such matter and be authenticated in such manner as may be required by regulations which the President may from time to time prescribe. [*M.C.M., pars. 154 (d), 358-363, 400, and pages 365-367 and 376-377.*]

"ART. 35. DISPOSITION OF RECORDS — GENERAL COURTS-MARTIAL. — The judge advocate of each general court-martial



shall, with such expedition as circumstances may permit, forward to the appointing authority or to his successor in command the original record of the proceedings of such court in the trial of each case. All records of such proceedings shall, after having been finally acted upon, be transmitted to the Judge Advocate General of the Army. [*M.C.M.*, *pars.* 366-368.]

"ART. 36. DISPOSITION OF RECORDS — SPECIAL AND SUMMARY COURTS-MARTIAL. — After having been acted upon by the officer appointing the court, or by the officer commanding for the time being, the record of each trial by special court-martial and a report of each trial by summary court-martial shall be transmitted to such general headquarters as the President may designate in regulations, there to be filed in the office of the judge advocate. When no longer of use, records of special and summary courts-martial may be destroyed. [*M.C.M.*, *pars.* 366-368.]

"ART. 37. IRREGULARITIES — EFFECT OF. — The proceedings of a court-martial shall not be held invalid, nor the findings or sentence disapproved, in any case on the ground of improper admission or rejection of evidence or for any error as to any matter of pleading or procedure unless in the opinion of the reviewing or confirming authority, after an examination of the entire proceedings, it shall appear that the error complained of has injuriously affected the substantial rights of an accused: *Provided*, That the act or omission upon which the accused has been tried constitutes an offense denounced and made punishable by one or more of these articles: *Provided further*, That the omission of the words 'hard labor' in any sentence of a court-martial adjudging imprisonment or confinement shall not be construed as depriving the authorities executing such sentence of imprisonment or confinement of the power to require hard labor as a part of the punishment in any case where it is authorized by the Executive order prescribing maxi-



mum punishments. [*M.C.M.*, *pars.* 34, 74 (e), 101, 322, 352-353, 364-365.]

"ART. 38. PRESIDENT MAY PRESCRIBE RULES. — The President may by regulations, which he may modify from time to time, prescribe the procedure, including modes of proof, in cases before courts-martial, courts of inquiry, military commissions, and other military tribunals: *Provided*, That nothing contrary to or inconsistent with these articles shall be so prescribed: *Provided further*, That all rules made in pursuance of this article shall be laid before the Congress annually. [*M.C.M.*, *pars.* 198-199.]

#### "E. LIMITATIONS UPON PROSECUTIONS

"ART. 39. AS TO TIME. — Except for desertion committed in time of war, or for mutiny or murder, no person subject to military law shall be liable to be tried or punished by a court-martial for any crime or offense committed more than two years before the arraignment of such person: *Provided*, That for desertion in time of peace or for any crime or offense punishable under articles ninety-three and ninety-four of this code the period of limitations upon trial and punishment by court-martial shall be three years: *Provided further*, That the period of any absence of the accused from the jurisdiction of the United States, and also any period during which by reason of some manifest impediment the accused shall not have been amenable to military justice, shall be excluded in computing the aforesaid periods of limitation: *And provided further*, That this article shall not have the effect to authorize the trial or punishment for any crime or offense barred by the provisions of existing law. [*M.C.M.*, *pars.* 149, 451.]

"ART. 40. AS TO NUMBER. — No person shall be tried a second time for the same offense. [*M.C.M.*, *par.* 149] 13



Q.W. 39 shows that as regards its  
essential features. Viol offenses  
fall into 3 groups.

1. Desertion, mutiny or murder have  
no limitation

2. Burglary, piracy and other crimes  
in A. & C. 93 ~~shall~~ have 3 yrs.

limit and no home franchises  
against joint described in Q.W. 94

3. All other offenses 2 yrs. -

Second half of 39 shows that  
in some instances the running  
of the Court-Martial is suspended  
especially in absence from U.S.A.

# "F. PUNISHMENTS

"ART. 41. CERTAIN KINDS PROHIBITED. — Punishment by flogging, or by branding, marking, or tattooing on the body is prohibited. [*M.C.M., pars. 344-345.*]

"ART. 42. PLACES OF CONFINEMENT — WHEN LAWFUL. — Except for desertion in time of war, repeated desertion in time of peace, and mutiny, no person shall under the sentence of a court-martial be punished by confinement in a penitentiary unless an act or omission of which he is convicted is recognized as an offense of a civil nature by some statute of the United States, or at the common law as the same exists in the District of Columbia, or by way of commutation of a death sentence, and unless, also, the period of confinement authorized and adjudged by such court-martial is one year or more: *Provided*, That when a sentence of confinement is adjudged by a court-martial upon conviction of two or more acts or omissions any one of which is punishable under these articles by confinement in a penitentiary, the entire sentence of confinement may be executed in a penitentiary: *Provided further*, That penitentiary confinement hereby authorized may be served in any penitentiary directly or indirectly under the jurisdiction of the United States: *Provided further*, That persons sentenced to dishonorable discharge and to confinement not in a penitentiary, shall be confined in the United States Disciplinary Barracks or elsewhere as the Secretary of War or the reviewing authority may direct, but not in a penitentiary. [*M.C.M., pars. 337-339, 341, 396-399.*]

"ART. 43. DEATH SENTENCE — WHEN LAWFUL. — No person shall, by general court-martial, be convicted of an offense for which the death penalty is made mandatory by law, nor sentenced to suffer death, except by the concurrence of two-thirds of the members of said court-martial and for an offense

art. 43. Death is mandatory in  
Arts 58, 59, 64, 66, 67, 75, 76, 77,  
78, 81, 86, 92.

in these articles expressly made punishable by death. All other convictions and sentences, whether by general or special court-martial, may be determined by a majority of the members present. [M.C.M., pars. 40-41, 90, 295, 308, 346, 378, 391.]

"ART. 44. COWARDICE; FRAUD — ACCESSORY PENALTY. — When an officer is dismissed from the service for cowardice or fraud, the crime, punishment, name, and place of abode of the delinquent shall be published in the newspapers in and about the camp and in the State from which the offender came or where he usually resides; and after such publication it shall be scandalous for an officer to associate with him. [M.C.M., par. 344.]

"ART. 45. MAXIMUM LIMITS. — Whenever the punishment for a crime or offense made punishable by these articles is left to the discretion of the court-martial, the punishment shall not, in time of peace, exceed such limit or limits as the President may from time to time prescribe. [M.C.M., pars. 40, 42, 44, 306-307, 309-328, 330-333, 340-349, 400, and pages 369-370 and 375-377.]

*with limits*

#### "G. ACTION BY APPOINTING OR SUPERIOR AUTHORITY

"ART. 46. APPROVAL AND EXECUTION OF SENTENCE. — No sentence of a court-martial shall be carried into execution until the same shall have been approved by the officer appointing the court or by the officer commanding for the time being. [M.C.M., pars. 369-376 and pages 371-373.]

"ART. 47. POWERS INCIDENT TO POWER TO APPROVE. — The power to approve the sentence of a court-martial shall be held to include:

"(a) The power to approve or disapprove a finding and to approve only so much of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to approve,

#45 In M.C.M. par 349 are given the maximum limits now suspended.

Sentence  
Distinguished approval " & confirmation "

Finding  
Note that lesser offense must not be wholly different one but one included in other. Thus burglary tho less than murder is not included in it. while AWOL is included in desertion.

the evidence of record requires a finding of only the lesser degree of guilt; and

“(b) The power to approve or disapprove the whole or any part of the sentence. [*M.C.M.*, par. 377.]

“ART. 48. CONFIRMATION — WHEN REQUIRED. — In addition to the approval required by Article forty-six, confirmation by the President is required in the following cases before the sentence of a court-martial is carried into execution, namely:

“(a) Any sentence respecting a general officer:

“(b) Any sentence extending to the dismissal of an officer, except that in time of war a sentence extending to the dismissal of an officer below the grade of brigadier general may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division;

“(c) Any sentence extending to the suspension or dismissal of a cadet; and

“(d) Any sentence of death, except in the cases of persons convicted in time of war of murder, rape, mutiny, desertion, or as spies; and in such excepted cases a sentence of death may be carried into execution upon confirmation by the commanding general of the Army in the field or by the commanding general of the territorial department or division.

“When the authority competent to confirm the sentence has already acted as the approving authority no additional confirmation by him is necessary. [*M.C.M.*, par. 378.]

“ART. 49. POWERS INCIDENT TO POWER TO CONFIRM. — The power to confirm the sentence of a court-martial shall be held to include:

“(a) The power to confirm or disapprove a finding, and to confirm so much only of a finding of guilty of a particular offense as involves a finding of guilty of a lesser included offense when, in the opinion of the authority having power to con-

(b) Notice that just as in (a) word finding is important, as in (b) important word is sentence.

48. This shows that we should speak of approval of officer appointing court confirmation by President. Former always necessary, latter in exceptional cases. In war Confirmation by comm. general.

In first par. emphatic word is confirm in clause (a) it is finding" in (b) "sentence"

firm, the evidence of record requires a finding of only the lesser degree of guilt; and

"(b) The power to confirm or disapprove the whole or any part of the sentence, [M.C.M., pars. 377, 379, 386, 388.]

"ART. 50. MITIGATION OR REMISSION OF SENTENCES. — The power to order the execution of the sentence adjudged by a court-martial shall be held to include, *inter alia*, the power to mitigate or remit the whole or any part of the sentence, but no sentence of dismissal of an officer and no sentence of death shall be mitigated or remitted by any authority inferior to the President.

"Any unexecuted portion of a sentence adjudged by a court-martial may be mitigated or remitted by the military authority competent to appoint, for the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the person under sentence is held, a court of the kind that imposed the sentence, and the same power may be exercised by superior military authority; but no sentence extending to the dismissal of an officer or loss of files, no sentence of death, and no sentence approved or confirmed by the President shall be remitted or mitigated by any other authority.

"The power of remission and mitigation shall extend to all uncollected forfeitures adjudged by sentence of a court-martial. [M.C.M., pars. 380-385, 390, 402-403.]

"ART 51. SUSPENSION OF SENTENCES OF DISMISSAL OR DEATH. — The authority competent to order the execution of a sentence of dismissal of an officer or a sentence of death may suspend such sentence until the pleasure of the President be known, and in case of such suspension a copy of the order of suspension, together with a copy of the record of trial, shall immediately be transmitted to the President. [M.C.M., par. 391.]

"ART. 52. SUSPENSION OF SENTENCE OF DISHONORABLE DISCHARGE. — The authority competent to order the execution





of a sentence, including dishonorable discharge, may suspend the execution of the dishonorable discharge until the soldier's release from confinement; but the order of suspension may be vacated at any time and the execution of the dishonorable discharge directed by the officer having general court-martial jurisdiction over the command, exclusive of penitentiaries and the United States Disciplinary Barracks, in which the soldier is held or by the Secretary of War. [*M.C.M.*, *par. 393.*]

"ART. 53. SUSPENSION OF SENTENCES OF FORFEITURE OR CONFINEMENT. — The authority competent to order the execution of a sentence adjudged by a court-martial may, if the sentence involve neither dismissal nor dishonorable discharge, suspend the execution of the sentence in so far as it relates to the forfeiture of pay or to confinement, or to both; and the person under sentence may be restored to duty during the suspension of confinement. At any time within one year after the date of the order of suspension such order may, for sufficient cause, be vacated and the execution of the sentence directed by the military authority competent to order the execution of like sentences in the command, exclusive of penitentiaries and the United States Disciplinary Barracks, to which the person under sentence belongs or in which he may be found; but if the order of suspension be not vacated within one year after the date thereof the suspended sentence shall be held to have been remitted. [*M.C.M.*, *par. 392 and page 373.*]

### "III. PUNITIVE ARTICLES

#### "A. ENLISTMENT; MUSTER; RETURNS

"ART. 54. FRAUDULENT ENLISTMENT. — Any person who shall procure himself to be enlisted in the military service of the United States by means of willful misrepresentation or con-

- 2002 placed criminal & military law  
on basis of modern criminology reform.

Classification of offenses:-

- a. Enlistment: Muster: Returns
- b. Detention: A.M.L.
- c. Disrespect: Insult: Mutiny.
- d. Arrest: Confinement.
- e. War offenders.
- f. Misc. Crimes & Offences.

cealment as to his qualifications for enlistment, and shall receive pay or allowances under such enlistment, shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 60, 74 (n), 149, 281, 405, and *pages* 335-337, and 393-396.]

"ART. 55. OFFICER MAKING UNLAWFUL ENLISTMENT. — Any officer who knowingly enlists or musters into the military service any person whose enlistment or muster in is prohibited by law, regulations, or orders shall be dismissed from the service or suffer such other punishment as a court-martial may direct. [*M.C.M.*, *pars.* 281, 312, 320, 378, 407, and *page* 337.]

"ART. 56. MUSTER ROLLS — FALSE MUSTER. — At every muster of a regiment, troop, battery, or company the commanding officer thereof shall give to the mustering officer certificates, signed by himself, stating how long absent officers have been absent and the reasons of their absence. And the commanding officer of every troop, battery, or company shall give like certificates, stating how long absent non-commissioned officers and private soldiers have been absent and the reasons of their absence. Such reasons and time of absence shall be inserted in the muster rolls opposite the names of the respective absent officers and soldiers, and the certificates, together with the muster rolls, shall be transmitted by the mustering officer to the Department of War as speedily as the distance of the place and muster will admit. Any officer who knowingly makes a false muster of man or animal, or who signs or directs or allows the signing of any muster roll knowing the same to contain a false muster or false statement as to the absence or pay of an officer or soldier, or who wrongfully takes money or other consideration on mustering in a regiment, company, or other organization, or on signing muster rolls, or who knowingly musters as an officer or soldier a person who is not such officer or soldier, shall be dismissed from the service and suffer such other pun-

# 54.

either is punitive and either pray or allowance not both are necessary. — It is no defense that soldier was a minor. False answers to immaterial questions are not fatal.

# 55.

~~54~~ 55 defines an offense to which knowledge and intent are essential.

"Muste" means the assembling, inspecting, entering upon the formal rolls and officially reporting as a component part of the command. (M.C. 11. 56)

ishment as a court-martial may direct. [*M.C.M.*, pars. 281, 320, 378, 407, and page 337.]

"ART. 57. FALSE RETURNS — OMISSION TO RENDER RETURNS. — Every officer commanding a regiment, an independent troop, battery, or company, or a garrison, shall, in the beginning of every month, transmit through the proper channels, to the Department of War, an exact return of the same, specifying the names of the officers then absent from their posts, with the reasons for and the time of their absence. Every officer whose duty it is to render to the War Department or other superior authority a return of the state of the troops under his command, or of the arms, ammunitions, clothing, funds, or other property thereunto belonging, who knowingly makes a false return thereof shall be dismissed from the service and suffer such other punishment as a court-martial may direct. And any officer who, through neglect or design, omits to render such return shall be punished as a court-martial may direct. [*M.C.M.*, pars. 281, 320, 378, 408, and page 338.]

"B. DESERTION — ABSENCE WITHOUT LEAVE

"ART. 58. DESERTION. — Any person subject to military law who deserts or attempts to desert the service of the United States shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct. [*M.C.M.*, pars. 41, 60, 74 (n), 149, 281, 284-286, 340, 378, 409, and pages 336, 338, 378, and 393-396.]

"ART. 59. ADVISING OR AIDING ANOTHER TO DESERT. — Any person subject to military law who advises or persuades or knowingly assists another to desert the service of the United States shall, if the offense be committed in time of war, suffer

In place a promulgation of the Pres.  
sets a maximum for the "such other pun-  
ishment" as a C.M. may direct.

This inoperative in war.

#57.

Remission or procrastination does not  
excuse.

#58.

Essential features of desertion are:

a. Intent not to return and

b. Overt act of separation from duty.

Drunkenness tends to show the absence  
of the intent.

Minority is no defence. Minority is a  
power in his parents' hand not his own.

Enlistment which in desertion does  
not remove the desertion.

death, or such other punishment as a court-martial may direct, and, if the offense be committed at any other time, any punishment, excepting death, that a court-martial may direct. [*M.C.M.*, *pars. 41, 378, 410, and page 338.*]

"ART. 60. ENTERTAINING A DESERTER. — Any officer who, after having discovered that a soldier in his command is a deserter from the military or naval service or from the Marine Corps, retains such deserter in his command without informing superior authority or the commander of the organization to which the deserter belongs, shall be punished as a court-martial may direct. [*M.C.M.*, *par. 411 and page 339.*]

"ART. 61. ABSENCE WITHOUT LEAVE. — Any person subject to military law who fails to repair at the fixed time to the properly appointed place of duty, or goes from the same without proper leave, or absents himself from his command, guard, quarters, station, or camp without proper leave, shall be punished as a court-martial may direct. [*M.C.M.*, *pars. 66, 149, 281, 283-284, 412, and page 339.*]

#### "C. DISRESPECT — INSUBORDINATION — MUTINY

"ART. 62. DISRESPECT TOWARD THE PRESIDENT, VICE PRESIDENT, CONGRESS, SECRETARY OF WAR, GOVERNORS, LEGISLATURES. — Any officer who uses contemptuous or disrespectful words against the President, Vice President, the Congress of the United States, the Secretary of War, or the governor or legislature of any State, Territory, or other possession of the United States in which he is quartered shall be dismissed from the service or suffer such other punishment as a court-martial may direct. Any other person subject to military law who so offends shall be punished as a court-martial may direct. [*M.C.M.*, *pars. 312, 378, 413, and page 339.*]

"ART. 63. DISRESPECT TOWARD SUPERIOR OFFICER. — Any



#59. Three offenses (1) Advising  
(2) Assisting  
(3) Persuading.

#60. The officer discovers this (1) when the soldier actually deserts and the (2) officer gains such a belief as the ordinary prudent officer would act upon.

#61. Does not require intent. Ignorance is a reason for leniency.

Contumptuous language is objectionable whether used in public or private, whether dealing with official in his public or private capacity, whether spoken or written; and whether false or true.

person subject to military law who behaves himself with disrespect toward his superior officer shall be punished as a court-martial may direct. [*M.C.M.*, par. 414 and page 339.]

"ART. 64. ASSAULTING OR WILLFULLY DISOBEYING SUPERIOR OFFICER. — Any person subject to military law who, on any pretense whatsoever, strikes his superior officer or draws or lifts up any weapon or offers any violence against him, being in the execution of his office, or willfully disobeys any lawful command of his superior officer, shall suffer death or such other punishment as a court-martial may direct. [*M.C.M.*, pars. 41, 74 (d), 286, 378, 415, and page 339.]

"ART. 65. INSUBORDINATE CONDUCT TOWARD NONCOMMISSIONED OFFICER. — Any soldier who strikes or assaults, or who attempts or threatens to strike or assault, or willfully disobeys the lawful order of a noncommissioned officer while in the execution of his office, or uses threatening or insulting language, or behaves in an insubordinate or disrespectful manner toward a noncommissioned officer while in the execution of his office, shall be punished as a court-martial may direct. [*M.C.M.*, pars. 416, 443 (IX), and pages 339-340.]

"ART. 66. MUTINY OR SEDITION. — Any person subject to military law who attempts to create or who begins, excites, causes, or joins in any mutiny or sedition in any company, party, post, camp, detachment, guard, or other command shall suffer death or such other punishment as a court-martial may direct. [*M.C.M.*, pars. 41, 378, 417, and page 340.]

"ART. 67. FAILURE TO SUPPRESS MUTINY OR SEDITION. — Any officer or soldier who, being present at any mutiny or sedition, does not use his utmost endeavor to suppress the same, or knowing or having reason to believe that a mutiny or sedition is to take place, does not without delay give information thereof to his commanding officer shall suffer death or such other

#63. Does not require acts nor failures.

Kindness or failure to salute are enough.

Oral disrespect not necessary.

64 Here again drunkenness can show absence of willfulness. - self defense is not forbidden; - nor violence in suppressing mutiny or sedition.

#65 Query: Would drunkenness have same effect as in 63 & 64? W thinks not!

#66 Mutiny is collective insubordination against military authority sedition against civil " " .

note that Art #67 creates duty to be acted on, Officers & soldiers have to do everything necessary, even against commanding officer, even to taking of lives.

punishment as a court-martial may direct. [*M.C.M.*, *pars.* 41, 378, 418, and *page* 340.]

"ART. 68. QUARRELS; FRAYS; DISORDERS. — All officers and noncommissioned officers have power to part and quell all quarrels, frays, and disorders among persons subject to military law and to order officers who take part in the same into arrest, and other persons subject to military law who take part in the same into arrest or confinement, as circumstances may require, until their proper superior officer is acquainted therewith. And whosoever, being so ordered, refuses to obey such officer or noncommissioned officer or draws a weapon upon or otherwise threatens or does violence to him shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 47, 52, 419, and *page* 340.]

"D. ARREST; CONFINEMENT.

"ART. 69. ARREST OR CONFINEMENT OF ACCUSED PERSONS. — An officer charged with crime or with a serious offense under these articles shall be placed in arrest by the commanding officer, and in exceptional cases an officer so charged may be placed in confinement by the same authority. A soldier charged with crime or with a serious offense under these articles shall be placed in confinement, and when charged with a minor offense he may be placed in arrest. Any other person subject to military law charged with crime or with a serious offense under these articles shall be placed in confinement or in arrest, as circumstances may require; and when charged with a minor offense such person may be placed in arrest. Any person placed in arrest under the provisions of this article shall thereby be restricted to his barracks, quarters, or tent, unless such limits shall be enlarged by proper authority. Any officer who breaks his arrest or who escapes from confinement before he is set at liberty by proper authority shall be dismissed from the service

§ 65. With exception of § 67, this is only law by which a corporal might order a general into arrest and only instances when anyone ~~can~~ <sup>other</sup> than the commanding officer can put an officer into arrest.

To break arrest or confinement is punishable even tho' one was innocent of charge or ought to be relieved.

or suffer such other punishment as a court-martial may direct; and any other person subject to military law who escapes from confinement or who breaks his arrest before he is set at liberty by proper authority shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 46-57, 378, 420, and *page* 340.]

"ART. 70. INVESTIGATION OF AND ACTION UPON CHARGES. — No person put in arrest shall be continued in confinement more than eight days, or until such time as a court-martial can be assembled. When any person is put in arrest for the purpose of trial, except at remote military posts or stations, the officer by whose order he is arrested shall see that a copy of the charges on which he is to be tried is served upon him within eight days after his arrest, and that he is brought to trial within ten days thereafter, unless the necessities of the service prevent such trial; and then he shall be brought to trial within thirty days after the expiration of said ten days. If a copy of the charges be not served, or the arrested person be not brought to trial, as herein required, the arrest shall cease. But persons released from arrest, under the provisions of this article, may be tried, whenever the exigencies of the service shall permit, within twelve months after such release from arrest: Provided, That in time of peace no person shall, against his objection, be brought to trial before a general court-martial within a period of five days subsequent to the service of charges upon him. [*M.C.M.*, *pars.* 54, 77, 80.]

"ART. 71. REFUSAL TO RECEIVE AND KEEP PRISONERS. — No provost marshal or commander of a guard shall refuse to receive or keep any prisoner committed to his charge by an officer belonging to the forces of the United States, provided the officer committing shall, at the time, deliver an account in writing, signed by himself, of the crime or offense charged against the prisoner. Any officer or soldier so refusing shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 55, 421, and *page* 342.]

A.W.70 is not punitive. - Notice that promptness in procedure is contemplated by A.W.70. Perfection in rule defining a punishment implies clarity and reasonableness, perfection in procedure requires:-

1. Certainty of punishment
2. Promptness not late
3. Equality
4. Humanity.

"ART. 72. REPORT OF PRISONERS RECEIVED. — Every commander of a guard to whose charge a prisoner is committed shall, within twenty-four hours after such confinement, or as soon as he is relieved from his guard, report in writing to the commanding officer the name of such prisoner, the offense charged against him, and the name of the officer committing him; and if he fails to make such report he shall be punished as a court-martial may direct. [*M.C.M., pars. 55, 422, and page 341.*]

"ART. 73. RELEASING PRISONER WITHOUT PROPER AUTHORITY. — Any person subject to military law who, without proper authority, releases any prisoner duly committed to his charge, or who through neglect or design suffers any prisoner so committed to escape, shall be punished as a court-martial may direct. [*M.C.M., pars. 57, 243, and page 341.*]

"ART. 74. DELIVERY OF OFFENDERS TO CIVIL AUTHORITIES. — When any person subject to military law, except one who is held by the military authorities to answer, or who is awaiting trial or result of trial, or who is undergoing sentence for a crime or offense punishable under these articles, is accused of a crime or offense committed within the geographical limits of the States of the Union and the District of Columbia, and punishable by the laws of the land, the commanding officer is required, except in time of war, upon application duly made, to use his utmost endeavor to deliver over such accused person to the civil authorities, or to aid the officers of justice in apprehending and securing him, in order that he may be brought to trial. Any commanding officer who upon such application refuses or willfully neglects, except in time of war, to deliver over such accused person to the civil authorities or to aid the officers of justice in apprehending and securing him shall be dismissed from the service or suffer such other punishment as a court-martial may direct.

"When, under the provisions of this article, delivery is made





to the civil authorities of an offender undergoing sentence of a court-martial, such delivery, if followed by conviction, shall be held to interrupt the execution of the sentence of the court-martial, and the offender shall be returned to military custody, after having answered to the civil authorities for his offense, for the completion of the said court-martial sentence. [*M.C.M.*, *pars.* 35, 281, 312, 378, 401, 424.]

“E. WAR OFFENSES.

“ART. 75. MISBEHAVIOR BEFORE THE ENEMY. — Any officer or soldier who misbehaves himself before the enemy, runs away, or shamefully abandons or delivers up any fort, post, camp, guard, or other command which it is his duty to defend, or speaks words inducing others to do the like, or casts away his arms or ammunition, or quits his post or colors to plunder or pillage, or by any means whatsoever occasions false alarms in camp, garrison, or quarters, shall suffer death or such other punishment as a court-martial may direct. [*M.C.M.*, *pars.* 41, 347, 378, 425, and pages 341-342.]

“ART. 76. SUBORDINATES COMPELLING COMMANDER TO SURRENDER. — If any commander of any garrison, fort, post, camp, guard, or other command is compelled, by the officers or soldiers under his command, to give it up to the enemy or to abandon it, the officers or soldiers so offending shall suffer death or such other punishment as a court-martial may direct. [*M.C.M.*, *pars.* 41, 378, 426, and page 342.]

“ART. 77. IMPROPER USE OF COUNTERSIGN. — Any person subject to military law who makes known the parole or countersign to any person not entitled to receive it according to the rules and discipline of war, or gives a parole or countersign different from that which he received, shall, if the offense be committed in time of war, suffer death or such other punish-

75 The enemy impacts any hostile body

Differences made by war are indicated  
in G.W. 2(d), 12, 48 (a) (d) 58, 59, 74, 75, 76  
77, 78, 79, 80, 81, 82, 85, 86, 92, 110.

76 If offenders don't belong to his  
Army and offence can be charged  
to him. This covers compulsion by acts.

77 Compulsion by words under 375.  
Parole differs from c.s. in that c.s. is  
given to guards, while parole is given  
only to officers of guard.

ment as a court-martial may direct. [*M.C.M.*, *pars.* 41, 378, 427, and page 342.]

"ART. 78. FORCING A SAFEGUARD. — Any person subject to military law who, in time of war, forces a safeguard shall suffer death or such other punishment as a court-martial may direct. [*M.C.M.*, *pars.* 41, 378, 428, and page 342.]

"ART. 79. CAPTURED PROPERTY TO BE SECURED FOR PUBLIC SERVICE. — All public property taken from the enemy is the property of the United States and shall be secured for the service of the United States, and any person subject to military law who neglects to secure such property or is guilty of wrongful appropriation thereof shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 429-430 and pages 342-343.]

"ART. 80. DEALING IN CAPTURED OR ABANDONED PROPERTY. — Any person subject to military law who buys, sells, trades, or in any way deals in or disposes of captured or abandoned property, whereby he shall receive or expect any profit, benefit, or advantage to himself or to any other person directly or indirectly connected with himself, or who fails whenever such property comes into his possession or custody or within his control to give notice thereof to the proper authority and to turn over such property to the proper authority without delay, shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial, military commission, or other military tribunal may adjudge, or by any or all of said penalties. [*M.C.M.*, *par.* 430 and page 343.]

"ART. 81. RELIEVING, CORRESPONDING WITH, OR AIDING THE ENEMY. — Whosoever relieves the enemy with arms, ammunition, supplies, money, or other thing, or knowingly harbors or protects or holds correspondence with or gives intelligence to the enemy, either directly or indirectly, shall suffer death, or such other punishment as a court-martial or

78. Lifeguard is written exception or protection or sentiment who is charged to give protection to enemy & property.
79. ~~But~~ Captured pub. property belongs to captor government & not to individuals in

79. Differ from 78. — (1) Extends to priv. prop.  
(2) Extends to pub. prop. which is abandoned & not captured.

81. "Whoever" extends beyond persons  
subj. to int'l. law.

military commission may direct. [*M.C.M.*, *pars.* 41, 378, 431, and *page* 343.]

"ART. 82. SPIES. — Any person who in time of war shall be found lurking or acting as a spy in or about any of the fortifications, posts, quarters, or encampments of any of the armies of the United States, or elsewhere, shall be tried by a general court-martial or by a military commission, and shall, on conviction thereof, suffer death. [*M.C.M.*, *pars.* 13, 39-41, 308, 378, 432, and *pages* 343-344.]

**"F. MISCELLANEOUS CRIMES AND OFFENSES**

"ART. 83. MILITARY PROPERTY — WILLFUL OR NEGLIGENT LOSS, DAMAGE, OR WRONGFUL DISPOSITION OF. — Any person subject to military law who willfully, or through neglect, suffers to be lost, spoiled, damaged, or wrongfully disposed of, any military property belonging to the United States shall make good the loss or damage and suffer such punishment as a court-martial may direct. [*M.C.M.*, *pars.* 281, 433, and *page* 344.]

"ART. 84. WASTE OR UNLAWFUL DISPOSITION OF MILITARY PROPERTY ISSUED TO SOLDIERS. — Any soldier who sells or wrongfully disposes of or willfully or through neglect injures or loses any horse, arms, ammunition, accouterments, equipment, clothing, or other property issued for use in the military service, shall be punished as a court-martial may direct. [*M.C.M.*, *pars.* 74 (c), 281, 299, 434, and *page* 344.]

"ART. 85. DRUNK ON DUTY. — Any officer who is found drunk on duty shall, if the offense be committed in time of war, be dismissed from the service and suffer such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall be punished as a court-martial may direct. Any person subject to military law, except an officer, who is found drunk on duty shall be punished as a court-mar-

82 See Rules of Land Warfare #199. - Essence of offense is simulation plus endeavor to obtain mil. information with intent to communicate it to enemy. - No alternative.

# 83

84 Essence is "property for use in mil. service."

85. Insubordination that he becomes drunk while on duty - either liquor or drugs. Is on duty when charged with responsibility. Commanding officer always on duty except when on leave or absence

tial may direct. [*M.C.M.*, *pars.* 40, 74 (p), 287, 304, 378, 435, and page 344.]

"ART. 86. MISBEHAVIOR OF SENTINEL. — Any sentinel who is found drunk or sleeping upon his post, or who leaves it before he is regularly relieved, shall, if the offense be committed in time of war, suffer death or such other punishment as a court-martial may direct; and if the offense be committed in time of peace, he shall suffer any punishment, except death, that a court-martial may direct. [*M.C.M.*, *pars.* 41, 281, 378, 436, and page 344.]

"ART. 87. PERSONAL INTEREST IN SALE OF PROVISIONS. — Any officer commanding in any garrison, fort, barracks, camp, or other place where troops of the United States may be serving who, for his private advantage, lays any duty or imposition upon or is interested in the sale of any victuals or other necessities of life brought into such garrison, fort, barracks, camp, or other place for the use of the troops, shall be dismissed from the service and suffer such other punishment as a court-martial may direct. [*M.C.M.*, *pars.* 40, 378, 437, and page 344.]

"ART. 88. INTIMIDATION OF PERSONS BRINGING PROVISIONS. — Any person subject to military law who abuses, intimidates, does violence to, or wrongfully interferes with any person bringing provisions, supplies, or other necessities to the camp, garrison, or quarters of the forces of the United States shall suffer such punishment as a court-martial may direct. [*M.C.M.*, *par.* 438 and pages 344-345.]

"ART. 89. GOOD ORDER TO BE MAINTAINED AND WRONGS REDRESSED. — All persons subject to military law are to behave themselves orderly in quarters, garrison, camp, and on the march; and any person subject to military law who commits any waste or spoil, or willfully destroys any property whatsoever (unless by order of his commanding officer), or commits any kind of depredation or riot shall be punished as a court-



86. Tentinelis not mere watchman (Arm. Reg 70)  
seriousness of being drunk on post is that  
he is only person protecting the position  
and is more responsible than officer  
drunk on duty.

87. No person other than commanding  
officer can be punished under this.

martial may direct. Any commanding officer who, upon complaint made to him, refuses or omits to see reparation made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article one hundred and five, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. [*M.C.M.*, *pars. 439, 481, and page 345.*]

“ART. 90. PROVOKING SPEECHES OR GESTURES. — No person subject to military law shall use any reproachful or provoking speeches or gestures to another; and any person subject to military law who offends against the provisions of this article shall be punished as a court-martial may direct. [*M.C.M.*, *par. 440 and page 345.*]

“ART. 91. DUELING. — Any person subject to military law who fights or promotes or is concerned in or connives at fighting a duel, or who having knowledge of a challenge sent or about to be sent fails to report the fact promptly to the proper authority shall, if an officer, be dismissed from the service or suffer such other punishment as a court-martial may direct; and if any other person subject to military law, shall suffer such punishment as a court-martial may direct. [*M.C.M.*, *pars. 378, 441, and page 345.*]

“ART. 92. MURDER — RAPE. — Any person subject to military law who commits murder or rape shall suffer death or imprisonment for life, as a court-martial may direct; but no person shall be tried by court-martial for murder or rape committed within the geographical limits of the States of the Union and the District of Columbia in time of peace. [*M.C.M.*, *pars. 35, 40, 346, 378, 442, and page 346.*]

“ART. 93. VARIOUS CRIMES. — Any person subject to military law who commits manslaughter, mayhem, arson, burglary, robbery, larceny, embezzlement, perjury, assault with intent to commit any felony, or assault with intent to do bodily harm,

84 First part applies to all persons while  
second applies to commanding officers

90. This article intends to prevent practices  
leading to breaches of peace and

92 This § doesn't define murder or rape. De-  
fined by local law or federal penal  
code. Clearly intends that such offenses  
shall in time of peace be dealt with as  
civilian etc. — In war & outside U.S.  
milit etc. take jurisdiction whether  
friendly countries in which troops are  
used & used in war

marshaled may direct. Any commanding officer who upon complaint under certain reparation suits to any dependent made to the party injured, in so far as the offender's pay shall go toward such reparation, as provided for in article one hundred and five, shall be dismissed from the service, or otherwise punished, as a court-martial may direct. [M.C.M., para. 123, 127, and page 365.]

Art. 94. Prevention sentences or gestures. — No person subject to military law shall use any reprehensible or pro-  
hibitory speeches or gestures in service; and any person subject to military law who violates against the provisions of this arti-  
cle shall be punished as a court-martial may direct. [M.C.M.,  
para. 121 and 122, 365.]

Art. 95. Desertion. — Any person subject to military law who  
deserts or attempts to desert or is convicted in or connives at fight-  
ing a duel, or who having knowledge of a challenge sent or about  
to be sent fails to report the fact promptly to the proper au-  
thority shall, if an officer, be dismissed from the service or suffer  
such other punishment as a court-martial may direct.  
Any other person subject to military law, shall or  
shall not be punished as a court-martial may direct. [M.C.M.,  
para. 124 and 125, 365.]

shall be punished as a court-martial may direct. [*M.C.M.*, pars. 35, 149, 280, 285, 443, and page 346.]

ART. 94. FRAUDS AGAINST THE GOVERNMENT. — Any person subject to military law who makes or causes to be made any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

1. "Who presents or causes to be presented to any person in the civil or military service thereof, for approval or payment, any claim against the United States, or any officer thereof, knowing such claim to be false or fraudulent; or

2. "Who enters into any agreement or conspiracy to defraud the United States by obtaining, or aiding others to obtain, the allowance or payment of any false or fraudulent claim; or

3. "Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or against any officer thereof, makes or uses, or procures, or advises the making or use of, any writing or other paper, knowing the same to contain any false or fraudulent statements; or

4. "Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, makes, or procures, or advises the making of, any oath to any fact or to any writing or other paper knowing such oath to be false; or

5. "Who, for the purpose of obtaining, or aiding others to obtain, the approval, allowance, or payment of any claim against the United States or any officer thereof, forges or counterfeits, or procures, or advises the forging or counterfeiting of any signature upon any writing or other paper, or uses, or procures, or advises the use of any such signature, knowing the same to be forged or counterfeited; or

6. "Who, having charge, possession, custody, or control of any money or other property of the United States, furnished or in-

13. Definition of these crimes left to local law.

14. Is equivalent to prohibiting any person may:  
with law from defrauding or attempting to  
conspire to defraud govt of U.S. or also  
stealing embezzling govt property.

tended for the military service thereof, knowingly delivers, or causes to be delivered, to any person having authority to receive the same, any amount thereof less than that for which he receives a certificate or receipt; or

§ “Who, being authorized to make or deliver any paper certifying the receipt of any property of the United States furnished or intended for the military service thereof, makes or delivers to any person such writing, without having full knowledge of the truth of the statements therein contained and with intent to defraud the United States; or

¶ “Who steals, embezzles, knowingly and willingly misappropriates, applies to his own use or benefit, or wrongfully or knowingly sells or disposes of any ordnance, arms, equipments, ammunition, clothing, subsistence stores, money, or other property of the United States furnished or intended for the military service thereof; or

10 “Who knowingly purchases or receives in pledge for any obligation or indebtedness from any soldier, officer, or other person who is a part of or employed in said forces or service, any ordnance, arms, equipment, ammunition, clothing, subsistence stores, or other property of the United States, such soldier, officer, or other person not having lawful right to sell or pledge the same;

11 “Shall, on conviction thereof, be punished by fine or imprisonment, or by such other punishment as a court-martial may adjudge, or by any or all of said penalties. And if any person, being guilty of any of the offenses aforesaid while in the military service of the United States, receives his discharge or is dismissed from the service, he shall continue to be liable to be arrested and held for trial and sentence by a court-martial in the same manner and to the same extent as if he had not received such discharge nor been dismissed. [*M.C.M.*, *pars.* 35, 38, 74 (o), 149, 286, 347, 444, and *pages* 346-348.]





"**ART. 95. CONDUCT UNBECOMING AN OFFICER AND GENTLEMAN.** — Any officer or cadet who is convicted of conduct unbecoming an officer and a gentleman shall be dismissed from the service. [*M.C.M., pars. 40, 71, 308-309, 312, 378, 445, and pages 348-349.*]

"**ART. 96. GENERAL ARTICLE.** — Though not mentioned in these articles, all disorders and neglects to the prejudice of good order and military discipline, all conduct of a nature to bring discredit upon the military service, and all crimes or offenses not capital, of which persons subject to military law may be guilty, shall be taken cognizance of by a general or special or summary court-martial, according to the nature and degree of the offense, and punished at the discretion of such court. [*M.C.M., pars. 35, 71, 74 (e), 90, 173, 231, 235, 286, 294, 415, 420, 423, 446, 460, and pages 336 and 349-352.*]

#### "IV. COURTS OF INQUIRY

"**ART. 97. WHEN AND BY WHOM ORDERED.** — A court of inquiry to examine into the nature of any transaction of or accusation or imputation against any officer or soldier may be ordered by the President or by any commanding officer; but a court of inquiry shall not be ordered by any commanding officer except upon the request of the officer or soldier whose conduct is to be inquired into. [*M.C.M., pars. 13, 447-452.*]

"**ART. 98. COMPOSITION.** — A court of inquiry shall consist of three or more officers. For each court of inquiry the authority appointing the court shall appoint a recorder. [*M.C.M., pars. 453-457, 465.*]

"**ART. 99. CHALLENGES.** — Members of a court of inquiry may be challenged by the party whose conduct is to be inquired into, but only for cause stated to the court. The court shall determine the relevancy and validity of any challenge, and shall

95 Only one, both prescribing no mandatory order the criminal from suicide and giving no alternative. - Misconduct either official or non official shall be enough to fulfill this decree.

95-96.

Private debts may indirectly become collectable.

#96. This concludes the series of crimes

92. Murder and Rape.

93. Select group of crimes.

94. Funds against government.

95-6 All other crimes.

Counts of Inquiry.

#97. Note that a Ct. of Inq. unless ordered by the Pres. is ordered only on request of the officer or soldier concerned.

#99 See A.W. 18. Cause must be given.

not receive a challenge to more than one member at a time. The party whose conduct is being inquired into shall have the right to be represented before the court by counsel of his own selection, if such counsel be reasonably available. [*M.C.M.*, par. 464.]

"ART. 100. OATH OF MEMBERS AND RECORDER. — The recorder of a court of inquiry shall administer to the members the following oath: 'You, A. B., do swear (or affirm) that you will well and truly examine and inquire, according to the evidence, into the matter now before you, without partiality, favor, affection, prejudice, or hope of reward. So help you, God.' After which the president of the court shall administer to the recorder the following oath: 'You, A. B., do swear (or affirm) that you will, according to your best abilities, accurately and impartially record the proceedings of the court and the evidence to be given in the case in hearing. So help you, God.'

"In case of affirmation the closing sentence of adjuration will be omitted. [*M.C.M.*, par. 466.]

"ART. 101. POWERS; PROCEDURE. — A court of inquiry, and the recorder thereof shall have the same power to summon and examine witnesses as is given to courts-martial and the judge advocate thereof. Such witnesses shall take the same oath or affirmation that is taken by witnesses before courts-martial. A reporter or an interpreter for a court of inquiry shall, before entering upon his duties, take the oath or affirmation required of a reporter or an interpreter for a court-martial. The party whose conduct is being inquired into or his counsel, if any, shall be permitted to examine and cross-examine witnesses so as fully to investigate the circumstances in question. [*M.C.M.*, pars. 458-472.]

"ART. 102. OPINION ON MERITS OF CASE. — A court of inquiry shall not give an opinion on the merits of the case inquired into unless specially ordered to do so. [*M.C.M.*, par. 469.]

#100. No judge advocate in Ct. of Eng.  
The recorder of a Ct. of Eng. somewhat  
resembles the Judge Advocate in a  
C.M. This is because the man in Eng.  
is not -

**"ART. 103. RECORD OF PROCEEDINGS — HOW AUTHENTICATED.** — Each court of inquiry shall keep a record of its proceedings, which shall be authenticated by the signature of the president and the recorder thereof, and be forwarded to the convening authority. In case the record can not be authenticated by the recorder, by reason of his death, disability, or absence, it shall be signed by the president and by one other member of the court. [*M.C.M., pars. 272, 473-475.*]

#### **"V. MISCELLANEOUS PROVISIONS**

**"ART. 104. DISCIPLINARY POWERS OF COMMANDING OFFICERS.** — Under such regulations as the President may prescribe, and which he may from time to time revoke, alter, or add to, the commanding officer of any detachment, company, or higher command may, for minor offenses not denied by the accused, impose disciplinary punishments upon persons of his command without the intervention of a court-martial, unless the accused demands trial by court-martial.

"The disciplinary punishments authorized by this article may include admonition, reprimand, withholding of privileges, extra fatigue, and restriction to certain specified limits, but shall not include forfeiture of pay or confinement under guard. A person punished under authority of this article, who deems his punishment unjust or disproportionate to the offense, may, through the proper channel, appeal to the next superior authority, but may in the meantime be required to undergo the punishment adjudged. The commanding officer who imposes the punishment, his successor in command, and superior authority shall have power to mitigate or remit any unexecuted portion of the punishment. The imposition and enforcement of disciplinary punishment under authority of this article for any act or omission shall not be a bar to trial by court-martial for a crime

#103 see A. W. 27.

#104. company discipline.

Limitations

1. minor offenses
2. not drunk
3. not asking for C. M.

or offense growing out of the same act or omission; but the fact that a disciplinary punishment has been enforced may be shown by the accused upon trial, and when so shown shall be considered in determining the measure of punishment to be adjudged in the event of a finding of guilty. [*M.C.M., para. 320, 333-336.*]

**“ART. 105. INJURIES TO PERSON OR PROPERTY — REDRESS OF.** — Whenever complaint is made to any commanding officer that damage has been done to the property of any person or that his property has been wrongfully taken by persons subject to military law, such complaint shall be investigated by a board consisting of any number of officers from one to three, which board shall be convened by the commanding officer and shall have, for the purpose of such investigation, power to summon witnesses and examine them upon oath or affirmation, to receive depositions or other documentary evidence, and to assess the damages sustained against the responsible parties. The assessment of damages made by such board shall be subject to the approval of the commanding officer, and in the amount approved by him shall be stopped against the pay of the offenders. And the order of such commanding officer directing stoppages herein authorized shall be conclusive on any disbursing officer for the payment by him to the injured parties of the stoppages so ordered.

“Where the offenders can not be ascertained, but the organization or detachment to which they belong is known, stoppages to the amount of damages inflicted may be made and assessed in such proportion as may be deemed just upon the individual members thereof who are shown to have been present with such organization or detachment at the time the damages complained of were inflicted as determined by the approved findings of the board. [*M.C.M., par. 481.*]

**ART. 106. ARREST OF DESERTERS BY CIVIL OFFICIALS.** — It shall be lawful for any civil officer having authority under the

#105. Another system of justice not using a C.M.

See G.W. 89. The result resembles that in a civilian Ct. where damages are given but differs in that remedy can't exceed the pay. The remedy comes not thru a C.M. but thru at Ct. of Investigation. A.C.M. is always a criminal Tribunal and even if the C.M. should take jurisdiction of the very case passed on by the Bd. of Inv. the C.M. could only give punishments and not damages.



laws of the United States, or of any State, Territory, District, or possession of the United States, to arrest offenders, summarily to arrest a deserter from the military service of the United States and deliver him into the custody of the military authorities of the United States. [*M.C.M.*, *pars.* 58-59.]

"ART. 107. SOLDIERS TO MAKE GOOD TIME LOST. — Every soldier who in an existing or subsequent enlistment deserts the service of the United States or without proper authority absents himself from his organization, station, or duty for more than one day, or who is confined for more than one day under sentence, or while awaiting trial and disposition of his case, if the trial results in conviction, or through the intemperate use of drugs or alcoholic liquor, or through disease or injury the result of his own misconduct, renders himself unable for more than one day to perform duty, shall be liable to serve, after his return to a full-duty status, for such period as shall, with the time he may have served prior to such desertion, unauthorized absence, confinement, or inability to perform duty, amount to the full term of that part of his enlistment period which he is required to serve with his organization before being furloughed to the Army reserve. [*M.C.M.*, *pars.* 38, 340.]

"ART. 108. SOLDIERS — SEPARATION FROM THE SERVICE. — No enlisted man, lawfully inducted into the military service of the United States, shall be discharged from said service without a certificate of discharge, signed by a field officer of the regiment or other organization to which the enlisted man belongs or by the commanding officer when no such field officer is present; and no enlisted man shall be discharged from said service before his term of service has expired, except by order of the President, the Secretary of War, the commanding officer of a department, or by sentence of a general court-martial. [*M.C.M.*, *pars.* 42, 44, 320, 382, 392-393, 403.]

"ART. 109. OATH OF ENLISTMENT. — At the time of his

#108. See A.W. 118. When there is involved separation from service the expression in case of officer is "diminished" but in case of soldier it is "dishonorable discharge".

(cf. M.C.M. 9310, 311)

enlistment every soldier shall take the following oath or affirmation: 'I, ———, do solemnly swear (or affirm) that I will bear true faith and allegiance to the United States of America; that I will serve them honestly and faithfully against all their enemies whomsoever; and that I will obey the orders of the President of the United States and the orders of the officers appointed over me, according to the Rules and Articles of War.' This oath or affirmation may be taken before any officer. [*M.C.M., par. 282.*]

"ART. 110. CERTAIN ARTICLES TO BE READ AND EXPLAINED. — Articles one, two, and twenty-nine, fifty-four to ninety-six, inclusive, and one hundred and four to one hundred and nine, inclusive, shall be read and explained to every soldier at the time of his enlistment or muster in, or within six days thereafter, and shall be read and explained once every six months to the soldiers of every garrison, regiment, or company in the service of the United States. [*M.C.M., par. 282.*]

"ART. 111. COPY OF RECORD OF TRIAL. — Every person tried by a general court-martial shall, on demand therefor, made by himself or by any person in his behalf, be entitled to a copy of the record of the trial. [*M.C.M., pars. 117, 354-357.*]

"ART. 112. EFFECTS OF DECEASED PERSONS — DISPOSITION OF. — In case of the death of any person subject to military law, the commanding officer of the place or command will permit the legal representative or widow of the deceased, if present, to take possession of all his effects then in camp or quarters, and if no legal representative or widow be present, the commanding officer shall direct a summary court to secure all such effects; and said summary court shall have authority to convert such effects into cash, by public or private sale, not earlier than thirty days after the death of the deceased, and to collect and receive any debts due decedent's estate by local debtors; and as soon as practicable after converting such

#109,110.

effects into cash said summary court shall deposit with the proper officer, to be designated in regulations, any cash belonging to decedent's estate, and shall transmit a receipt for such deposit, accompanied by any will or other papers of value belonging to the deceased, an inventory of the effects secured by said summary court, and a full account of his transactions to the War Department for transmission to the Auditor for the War Department for action as authorized by law in the settlement of the accounts of deceased officers or enlisted men of the Army; but if in the meantime the legal representative, or widow, shall present himself or herself to take possession of decedent's estate the said summary court shall turn over to him or her all effects not sold and cash belonging to said estate, together with an inventory and account, and make to the War Department a full report of his transactions.

"The provisions of this article shall be applicable to inmates of the United States Soldiers' Home who die in any United States military hospital outside of the District of Columbia where sent from the home for treatment. [*M.C.M.*, *par. 482.*]

"ART. 113. INQUESTS. — When at any post, fort, camp, or other place garrisoned by the military forces of the United States and under the exclusive jurisdiction of the United States, any person shall have been found dead under circumstances which appear to require investigation, the commanding officer will designate and direct a summary court-martial to investigate the circumstances attending the death; and, for this purpose, such summary court-martial shall have power to summon witnesses and examine them upon oath or affirmation. He shall promptly transmit to the post or other commander a report of his investigation and of his findings as to the cause of the death. [*M.C.M.*, *par. 483 and page 409.*]

"ART. 114. AUTHORITY TO ADMINISTER OATHS. — Any judge advocate or acting judge advocate, the president of a general



or special court-martial, any summary court-martial, the judge advocate or any assistant judge advocate of a general or special court-martial, the president or the recorder of a court of inquiry or of a military board, any officer designated to take a deposition, any officer detailed to conduct an investigation, and the adjutant of any command shall have power to administer oaths for the purposes of the administration of military justice and for other purposes of military administration; and in foreign places where the Army may be serving shall have the general powers of a notary public or of a consul of the United States in the administration of oaths, the execution and acknowledgment of legal instruments, the attestation of documents, and all other forms of notarial acts to be executed by persons subject to military law. [*M.C.M., par. 138.*]

“ART. 115. APPOINTMENT OF REPORTERS AND INTERPRETERS. — Under such regulations as the Secretary of War may from time to time prescribe, the president of a court-martial or military commission, or a court of inquiry shall have power to appoint a reporter, who shall record the proceedings of and testimony taken before such court or commission and may set down the same, in the first instance, in shorthand. Under like regulations the president of a court-martial or military commission, or court of inquiry, or a summary court, may appoint an interpreter, who shall interpret for the court or commission. [*M.C.M., pars. 112–119, 135–136, 457.*]

“ART. 116. POWERS OF ASSISTANT JUDGE ADVOCATES. — An assistant judge advocate of a general court-martial shall be competent to perform any duty devolved by law, regulation; or the custom of the service upon the judge advocate of the court. [*M.C.M., pars. 106–107.*]

“ART. 117. REMOVAL OF CIVIL SUITS. — When any civil suit or criminal prosecution is commenced in any court of a State against any officer, soldier, or other person in the military





service of the United States on account of any act done under color of his office or status, or in respect to which he claims any right, title, or authority under any law of the United States respecting the military forces thereof, or under the law of war, such suit or prosecution may at any time before the trial or final hearing thereof be removed for trial into the district court of the United States in the district where the same is pending in the manner prescribed in section thirty-three of the Act entitled 'An Act to codify, revise, and amend the laws relating to the judiciary,' approved March third, nineteen hundred and eleven, and the cause shall thereupon be entered on the docket of said district court and shall proceed therein as if the cause had been originally commenced in said district court and the same proceedings had been taken in such suit or prosecution in said district court as shall have been had therein in said State court prior to its removal, and said district court shall have full power to hear and determine said cause. [*M.C.M., par. 484.*]

"ART. 118. OFFICERS — SEPARATION FROM SERVICE. — No officer shall be discharged or dismissed from the service except by order of the President or by sentence of a general court-martial; and in time of peace no officer shall be dismissed except in pursuance of the sentence of a court-martial or in mitigation thereof; but the President may at any time drop from the rolls of the Army any officer who has been absent from duty three months without leave or who has been absent in confinement in a prison or penitentiary for three months after final conviction by a court of competent jurisdiction. [*M.C.M., pars. 15, 38, 42, 44, 320, 378, 382, 391-393, 403.*]

"ART. 119. RANK AND PRECEDENCE AMONG REGULARS, MILITIA, AND VOLUNTEERS. — That in time of war or public danger, when two or more officers of the same grade are on duty in the same field, department, or command, or of organizations thereof, the President may assign the command of the



forces of such field, department, or command, or of any organization thereof, without regard to seniority of rank in the same grade. In the absence of such assignment by the President, officers of the same grade shall rank and have precedence in the following order, without regard to date of rank or commission as between officers of different classes, namely: First, officers of the Regular Army and officers of the Marine Corps detached for service with the Army by order of the President; second, officers of forces drafted or called into service of the United States; and, third, officers of the volunteer forces: *Provided*, That officers of the Regular Army holding commissions in forces drafted or called into the service of the United States or in the volunteer forces shall rank and have precedence under said commissions as if they were commissions in the Regular Army; the rank of officers of the Regular Army under commissions in the National Guard as such shall not, for the purposes of this article, be held to antedate the acceptance of such officers into the service of the United States under said commissions. [*M.C.M.*, *pars.* 10-12.]

"ART. 120. COMMAND WHEN DIFFERENT CORPS OR COMMANDS HAPPEN TO JOIN. — When different corps or commands of the military forces of the United States happen to join or do duty together the officer highest in rank of the line of the Regular Army, Marine Corps, forces drafted or called into the service of the United States or Volunteers, there on duty, shall, subject to the provisions of the last preceding article, command the whole and give orders for what is needful in the service, unless otherwise directed by the President. [*M.C.M.*, *pars.* 10-12, 14, 21, 25.]

"ART. 121. COMPLAINTS OF WRONGS. — Any officer or soldier who believes himself wronged by his commanding officer, and, upon due application to such commander, is refused redress, may complain to the general commanding in the locality where



the officer against whom the complaint is made is stationed. The general shall examine into said complaint and take proper measures for redressing the wrong complained of; and he shall, as soon as possible, transmit to the Department of War a true statement of such complaint, with the proceedings had thereon." [M.C.M., *pars.* 104, 485.]

SEC. 4. The provisions of section three of this Act shall take effect and be in force on and after the first day of March, nineteen hundred and seventeen: *Provided*, That articles four, thirteen, fourteen, fifteen, twenty-nine, forty-seven, forty-nine, and ninety-two shall take effect immediately upon the approval of this Act. [M.C.M., *par.* 486.]

SEC. 5. That all offenses committed and all penalties, forfeitures, fines, or liabilities incurred prior to the taking effect of this Act, under any law embraced in or modified, changed, or repealed by this Act, may be prosecuted, punished, and enforced in the same manner and with the same effect as if this Act had not been passed. [M.C.M., *par.* 487.]

SEC. 6. All laws and parts of laws in so far as they are inconsistent with this Act are hereby repealed. [M.C.M., *page* IX.]

Approved, August 29, 1916.



## PART III

### PROBLEMS<sup>1</sup>

For each of the following statements of fact it is necessary to determine (a) whether there is a military offense, (b) under which of the Articles of War the offense, if any, belongs, (c) what should be the tribunal, and (d) how a charge and specification should be framed<sup>2</sup> in case the tribunal should be a court-martial.

#### PROBLEM 1

From 7 A.M., March 23, 1917, until 5.30 P.M., March 24, 1917, Private Samuel Kelham, Company B, 2d Field Battalion, Signal Corps, U. S. Army, at Camp Stewart, Texas, absented himself from his company without permission, after having gone to the properly appointed place for the performance of duty as Kitchen Police to which he had been detailed.

#### PROBLEM 2

At Brownsville, Texas, during troop drill on April 13, 1917, Private Henry Williams, of Machine Gun Troop, Seventh Cavalry, was ordered by First Lieutenant James I. Kelsey, Seventh Cavalry, to ride horse No. 43. He refused to ride the horse. The horse was slow and stubborn, but not vicious.

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<sup>1</sup> Each statement is based upon some case brought before a court-martial since the present Articles of War went into effect; but names of persons and of places have been changed.

<sup>2</sup> M.C.M., pars. 61-74 and pages 333-352.

6 Large: Violation of the — Article of <sup>war</sup> ~~the~~  
Specification: In that [rank and name  
and organization] did at [place] on or  
about [date] etc etc [simple story]

Signed: [Name]  
[Rank and branch].

#1. Falls under Art. 61. In all cases look  
for some specific offense. Do not  
class it under Art 96.

Art 64.  
#2. In time of War: President's maximum  
punishment <sup>order</sup> is suspended



**PROBLEM 3**

Private William Clark, Company K, 26th Infantry, at Fort Grant, Canal Zone, on February 22, 1917, procured himself to be enlisted by concealing from First Lieutenant Henry Q. King, Medical Reserve Corps, a recruiting officer, the fact that under the name of William Park he had been dishonorably discharged from Battery E, 6th Field Artillery, on April 19, 1912, pursuant to a sentence of court-martial. After his last enlistment he received pay and allowances.

**PROBLEM 4**

At Bosque Bonite Ranch, Texas, on March 22, 1917, Private Knox K. Smith, Company K, 34th Infantry, refused to submit to a surgical operation prescribed by First Lieutenant Larz K. Trask, Medical Reserve Corps, the operation being one without appreciable risk to life.

**PROBLEM 5**

Private Charles H. Anderson, Troop H, 14th Cavalry, at Fort Kamehameha, Hawaii Territory, on March 7, 1917, received a pass from noon until reveille next morning. In the afternoon of March 8 he was seen in Honolulu by his captain and was ordered to return to the fort by a train starting in an hour and a half. Before the train started, he went to a pier and boarded a steamship which was bound for Kauai. He was then in uniform; but the uniform was covered with overalls and a brown coat, and for the cap was substituted a fireman's cap. A harbor police officer arrested him and asked him where he was going. Anderson said, "Any old place." At the time of the arrest the train had been gone for an hour. Anderson was not drunk on March 8, but he had been drinking the night before.

#3

Falls under Art. 54. On account of concealment and nondisclosure, not because of misrepresentation. Reestablishment does not wipe out earlier records.

#4

Art. 96, not 64 for Lieut in M.P.C. was not his superior.

#5. Falls under 558.

Dissection includes absence without leave but not vice versa.

Drunkenness not a factor that day.

He got dishonorable discharge and 1 yr.

**PROBLEM 6**

Private Aaron K. Keyser, Company G, 34th Infantry, at Camp Wilson, Texas, on April 7, 1917, after the Articles of War had been read to the company on notification of the declaration of the state of war with Germany, loaded his rifle and said, "I'll kill myself rather than go to war and get killed." On April 19, at the same place, he stole one bandoleer of ball ammunition, caliber 30, model 1906, of the value of \$1.56, property of the United States issued to Corporal William Mills, Company G, 34th Infantry, which had been intended for the military service of the Government. Keyser sold this ammunition the same day.

**PROBLEM 7**

At Schofield Barracks, Hawaii Territory, on March 4, 1917, Private Richard K. Phelps, Company L, 4th Field Artillery, negligently lost an olive-drab sweater, value \$2.40, military property belonging to the United States.

**PROBLEM 8**

On March 8, 1917, Bugler Henry Pitkin, Fifth Company, Coast Artillery Corps, was tried before a special court-martial at Fort Grant, Canal Zone, for having assaulted a postal clerk. He was sworn as a witness, and he testified that in the altercation with the postal clerk he used no bad language. William K. Jones and John Sheldon were present at the altercation; and they are now ready to testify that Pitkin's testimony was untrue.

**PROBLEM 9**

At Fort Shafter, Hawaii Territory, Private James Sullivan, at 2 A.M., March 12, 1917, had in his possession a bottle of in-

#6.  
Art 96.

#7  
Art 8\*3

#8.  
Art. 93.

#9  
Art.

toxicating liquor and was prowling around officers' quarters in violation of the restrictions imposed upon class "B" conduct grade, in which class he had been placed.

#### PROBLEM 10

On March 23, 1917, Private <sup>Leonard Jackson</sup> ~~Henry Judson~~, Company C, 7th Infantry, at Fort Oglethorpe, Ga., talked and swore in the ranks while at drill. Captain John S. Dilworth, 7th Infantry, his superior officer, then put him under arrest. The arrest was administered by causing a sentry to go about behind him. The next day Judson went to Captain Dilworth and asked that the sentry be taken off and that confinement in the guard house be substituted. The request was refused, and thereupon Judson swore at Captain Dilworth.

#### PROBLEM 11

John C. Duncan, Private, Troop G, 12th Cavalry, carelessly discharged a service pistol in his tent, at Culberson's Ranch, N. M., in violation of orders, on March 27, 1917. He was ordered by his commanding officer into confinement. On March 29, 1917, he escaped from confinement, at Laing's Ranch, N. M., before he had been set at liberty.

#### PROBLEM 12

Private David G. King, Troop B, Third Cavalry, having received a command from his superior officer, First Lieutenant Estes M. Hord, Third Cavalry, to go out for drill, and having received an order to the same effect from Sergeant Thomas J. Murphy, Troop B, Third Cavalry, in the discharge of his office, willfully disobeyed, at Fort Randolph, Canal Zone, on March 13, 1917.



## PROBLEM 13

On March 21, 1917, Private Peter A. Fish, Company A, 3d Infantry, at Fort Oglethorpe, Ga., was drunk in the company's quarters at seven o'clock in the evening. The same night, while still drunk, he took from the cooks' supplies twenty-five pounds of pork sausage, worth \$7.62, twenty-two pounds of ham, worth \$4.81, and seven pounds of cheese, worth \$1.42, all this being property of the company. He put this property in a box, which he left at the company's bakery, and he told one of the cooks that he had done all this, that he had done it as a joke on the cooks, and that the property would be found at the bakery. The property was found the same night.

## PROBLEM 14

~~WHITNEY YOUNG~~

Private ~~Henry Henderson~~, Company K, 20th Infantry, was drunk in camp at Camp Wilson, Texas, on April 13, 1917.

## PROBLEM 15

~~DAVE~~

Private ~~Samuel H. Hurd~~, Company B, 25th Infantry, on guard as a sentinel at El Paso, Texas, April 16, 1917, was found asleep. He was ~~sixteen~~ years old. He had been in the service for three months. He had gone on guard at four o'clock in the morning. After walking on guard for about an hour and fifteen minutes, he felt a ~~cramp~~ and sat down to ~~rest~~? It was then that he fell asleep.

## PROBLEM 16

Private Francis Leary, Company C, 3d Infantry, on March 10, 1917, at Panama, R. P., wrongfully used cocaine, a narcotic drug.









A.W.	Subject
54.	Fraudulent Enlistment.
58.	Desertion.
61.	Absence without leave.
62.	Disrespect toward Pres, etc.
63.	" " Superior Officer.
64.	Assaulting or willfully disobeying sup. c
65.	Insubordination toward non-com.
69.	Arrest or confinement of accused
75.	Misbehavior before enemy.
83.	Military Property — Wrongful Disposal
84.	" " — Issued to soldier.
85.	Drunk on duty.
86.	Misbehavior of sentinel.
93.	Various Crimes.
94.	Frauds against Gov't.
95.	Conduct unbecoming an Officer.
96.	General Article.

## Penalty.

C.M.

War: Death or Peace: except death.

C.M.

Officer: Dismissal or Others: C.M.

C.M.

"Death or"

C.M.

Officer: Dismissal or Others: C.M.

"Death or"

C.M. + make good.

C.M.

Officer: w War, Dis + w Peace, C.M. Others: C.

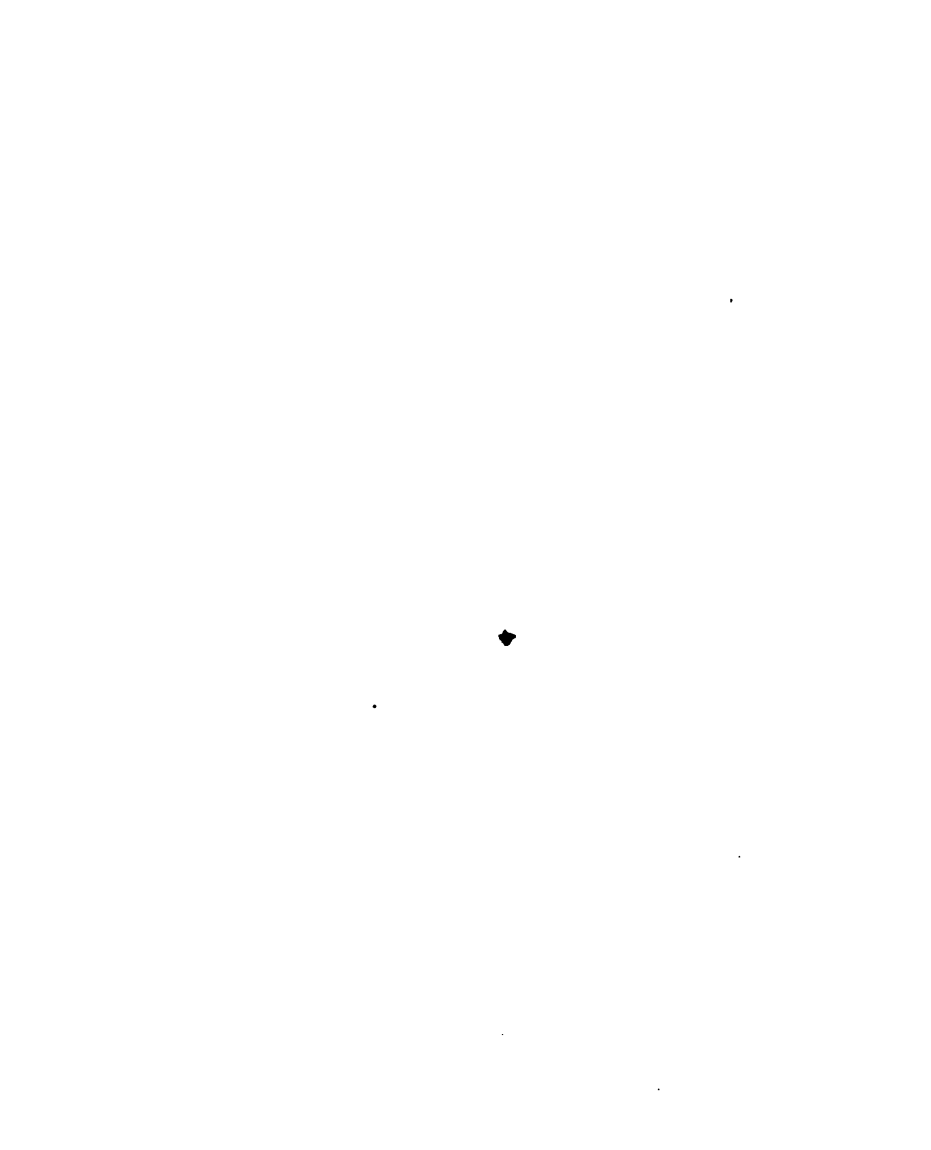
War: "Death or" Peace: Except death

C.M.

C.M, fine or imp.

Dismissal

C.M.







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